

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DECHAUN ANDREW SMITH,

Defendant-Appellant.

UNPUBLISHED

April 27, 2006

No. 258200

St. Clair Circuit Court

LC No. 04-000864-FH

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

DAVIS, J. (*concurring*).

On the record of this case as a whole, I agree with the majority's reasoning and result.

I write separately because the record also reflects an appearance of indifference, laxity, or both on the part of the prosecutor's office and the police in following the trial court's discovery orders. As a result, police car video recordings that were of evidentiary interest to the defendant – and to which the defendant was entitled by court order – were erased.

The earliest order for these tapes was issued by the district court on April 7, 2004. Subsequently, on May 10 and June 7, 2004, the circuit judge from the bench encouraged the prosecutor to facilitate defense discovery of the tapes that were in police possession. It was not until June 29, 2004, the first scheduled trial date, that the people finally informed the defense that the tapes had been recycled and no longer existed. The record is silent as to when that recycling was done. It was also not until the day of trial that the prosecution finally made photographs available to defendant.

How this mishandling of potential evidence occurred is also suggested by the record, given the shuffle of assistant prosecutors in and out of the case, and given the imprecise and untimely demands of defense counsel. The absence of any apparent bad faith or proven prejudice is of little comfort to one facing trial on felony charges.

It is my hope that by raising this issue, similar problems may be averted in the future.

/s/ Alton T. Davis